

LICENSE TO OCCUPY

(THIS AGREEMENT IS A LICENSE TO OCCUPY SPACE. IT IS NOT A LEASE AND DOES NOT CREATE ANY LEASEHOLD INTEREST OR RIGHTS. LICENSOR AND LICENSEE SPECIFICALLY DISCLAIM ANY INTENTION TO CREATE ANY LEASEHOLD INTEREST OR RIGHTS, OR ANY RELATIONSHIP OF LANDLORD AND TENANT BY THIS DOCUMENT.)

THIS LICENSE TO OCCUPY (this “**License**”) is made and entered into as of the ____ day of _____, 2015 (the “**Effective Date**”), by and between **DISTRICT OF COLUMBIA**, a municipal corporation, by and through the Department of General Services (“**Licensor**”), and **320 FLORIDA OWNER, LLC**, a Delaware limited liability company (“**Licensee**”). Licensor and Licensee are each referred to herein as a “**Party**” and collectively as “**Parties**”.

RECITALS:

1. Licensor owns or controls a certain lot located in the 300 block of Florida Avenue, NE, Washington, D.C., also known as Square 3585, Lot 807 for tax and assessment purposes and further described on **Exhibit A** attached hereto (the “**Premises**”);
2. Licensee intends to use the Premises for hardscape and landscape improvements related to Licensee’s work at 320 Florida Avenue, NE (“**Adjacent Property**”) for a development project (“**Project**”) on the terms and conditions set forth below; and
3. Licensor is willing to grant Licensee the right to use the Premises on such terms and conditions as set forth below.

NOW, THEREFORE, in consideration of Licensor’s grant of the use of the Premises and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Licensor and Licensee agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated into this License to the same extent as if set forth herein in full and are made a part hereof.

2. **License; Term.**

Subject to the terms provided herein, Licensor grants Licensee during the term of the License the right to occupy the Premises for the Permitted Use. Licensee, its contractors and agents shall have access to the Premises 24 hours per day, 7 days a week during the License Term (defined below). This License shall commence on the Effective Date and, unless terminated earlier, expire on the date which is two (2) years following the Effective Date (the “**Expiration Date**”, and the period between the Effective Date and the Expiration Date being the “**License Term**”). Notwithstanding the foregoing, each Party may terminate this License at any time upon sixty (60) days prior written notice to the other Party. Upon termination of this License, Licensee shall immediately vacate the Premises and return the Premises to substantially the same condition or better, as it was on the Effective Date.

3. **Permitted Uses.** Licensee is entitled to improve the Premises by constructing a new public plaza, green space and a pedestrian pathway (“**Permitted Uses**”), as more specifically shown on **Exhibit B**. Any other uses are strictly prohibited without the prior written consent of Licensor. Licensee is solely responsible for all permits, authorizations approvals required for the Permitted Uses. In addition, Licensee shall comply with all requirements of the Zoning Commission Order _____.

4. **License Fee.** None.

5. **Right of Licensor’s Entry.** So long as Licensor does not materially adversely affect or interfere with Licensee’s use of the Premises, Licensee shall permit Licensor or its designees to enter all parts of the Premises to inspect the same and make necessary repairs or alterations. In the event of an emergency, Licensor may enter the Premises at any time and make such inspection and repairs as Licensor deems necessary.

6. **Condition of Premises.** Licensee accepts the Premises in its “AS IS, WHERE IS” condition as of the Effective Date of this License. The Licensee assumes all risk of loss, damage or personal injury resulting from Licensee’s or Licensee’s officers, directors, members, agents, contractors, subcontractors, licensees, invitees, and employees (each and collectively, “**Licensee’s Agents**”) entry on the Premises or use of the Premises at any time.

7. **Licensor Responsibilities.** Licensor shall have no responsibilities whatsoever regarding the Premises during the Term of this License.

8. **Licensee’s Responsibilities.** Licensee, at its sole cost and expense, shall maintain the Premises in good order, condition and repair, and shall keep the Premises safe, clean, presentable, secure, sanitary and orderly, including but not limited to (i) removing trash and other debris from the Premises on a daily basis, (ii) promptly removing snow and ice from the Premises, (iii) removing any property of Licensor not securely contained on a daily basis, (iv) cleaning and tidying the Premises on a daily basis, and (v) providing the necessary security for the protection of human life, the prevention of loss of property and the detection/reporting of any criminal activity on the Premises during the term of this License (including but not limited to maintaining any existing fences around the Premises and patrolling the area with security personnel).

9. **Utilities.** The cost of any and all utilities used at the Premises shall be at the sole cost and expense of the Licensee; any and all utility accounts or hookups used by Licensee shall be in Licensee’s name. Licensor makes no representations whatsoever as to the availability of any utilities at the Premises.

10. **Failure to Vacate.** Licensee hereby expressly waives any notice to quit that may or might be required by law, now or in the future. If Licensee does not vacate the Premises upon termination or expiration of this License as provided in Section 2 above, such Licensee shall be liable to Licensor for any and all damages that Licensor may suffer as a result of any breach of this License by such Licensee including, but not limited to, reasonable attorneys’ fees. If Licensee should fail to vacate the Premises on or before the Expiration Date (or date of earlier termination in accordance with the terms hereof), (i) the Licensee authorizes Licensor, on behalf of Licensee, to consent immediately to judgment being entered against the Licensee in any suit

for possession of the Premises filed by Licensor and to obtain a Writ of Possession for the Premises (“**Writ**”) from the court; (ii) Licensor shall be entitled to pursue a separate action against the Licensee for Licensor’s damages, to the extent such damages can be established, as a result of such breach of this License by Licensee, and (iii) the Licensee hereby waives any right to object to or contest Licensor’s filing of any suit for possession of the Premises or the issuance of a Writ to the Licensor by the court at any time after the Expiration Date (or date of earlier termination in accordance with the terms hereof), assuming there is a failure to vacate by Licensee. Licensee and Licensor hereby waive any right to a jury trial and Licensee consents to the payment of Licensor’s reasonable attorneys’ fees, including reasonable attorneys’ fees where Licensor is represented by the Office of the Attorney General for the District of Columbia. In such event, such attorneys’ fees for Licensor shall be calculated based on the then applicable hourly rates established in the most current *Laffey* matrix prepared by the Civil Division of the United States Attorney’s Office for the District of Columbia.

11. Indemnification and Insurance.

- a. Indemnification. Except to the extent arising out of the negligence or willful misconduct, as determined by a court of competent jurisdiction, of Licensor or of the “**Licensor’s Indemnitees**” (as defined below), the Licensee shall save, indemnify, hold harmless and defend Licensor and Licensor’s agents, employees, officers and directors (each and collectively, the “**Licensor’s Indemnitees**”) against any and all claims, suits, liabilities, damages and judgments, including, without limitation, reasonable attorney’s fees and litigation costs, arising out of, resulting from, or relating to (a) any acts or omissions of the Licensee or Licensee’s Agents on, in or upon the Premises during the term of this License, (b) Licensee’s or Licensee’s Agents use of the Premises, or (c) any breach of this License by the Licensee.
- b. Insurance. The Licensee shall procure and maintain or cause to be procured and maintained during the entire period of the License Term, at its sole cost and expense, the types of insurance specified below. The Licensee shall submit, or cause its insurance broker or insurance company to submit to the Licensor certificates of insurance and copies of the declarations pages and endorsements evidencing all of the required coverage prior to the commencement of this License, prior to the Effective Date of this License. Licensee shall cause the District of Columbia, as its interests may appear, to be named as an additional insured (or additional loss payee, as applicable) on all such insurance policies. In no event shall the Licensee occupy the Premises until the required insurance evidence has been provided to and accepted by the Licensor. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed (if applicable) and have an A.M. Best Company rating of A-VIII or higher. The Licensee shall require all of its contractors and subcontractors to carry the same insurance required herein. The Licensee shall ensure that all policies provide that the Licensor shall be given thirty (30) days prior written notice in the event that the stated limit in the declaration page of the policy is reduced via endorsement or the

policy is canceled prior to the expiration date shown on the declarations pages. The Licensee shall provide the Licensor with ten (10) days prior written notice in the event of non-payment of premium. The Licensor reserves the right to modify or increase Licensee's insurance requirements hereunder in the event that it is possible to obtain the modified insurance requirements for commercially reasonable amounts. The Licensee will be afforded a sixty (60) day period to comply with any modification or increase.

i. *Types of Insurance.*

- 1. Commercial General Liability Insurance.** The Licensee shall carry commercial general liability insurance (ISO form or equivalent) with a minimum combined single limit \$2,000,000 and a general aggregate limit of \$5,000,000, which includes bodily injury and property damage (including but not limited to premises-operations), broad form property damage, products and completed operations, personal and advertising Injury, and contractual liability and independent contractors coverage. Licensee shall ensure such policies are primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation.
- 2. Automobile Liability Insurance.** The Licensee shall carry automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with this License. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
- 3. Workers' Compensation Insurance.** The Licensee shall carry workers' compensation insurance in accordance with the statutory mandates of the District of Columbia.
- 4. Employer's Liability Insurance.** The Licensee shall carry employer's liability insurance as follows: \$500,000 per accident for injury, \$500,000 per employee for disease, and \$500,000 for the policy disease limit.
- 5. Professional Liability Insurance (Errors & Omissions).** The Licensee shall carry professional liability insurance (errors and omissions) to cover liability resulting from any error or omission in the performance of services related to this License or while using the Premises, to the extent professional liability insurance (errors and omissions) coverage is available that covers the activities or business operations of Licensee, its agents, employees, or contractors. Licensee shall ensure that said policy shall provide limits of \$2,000,000 per occurrence for each wrongful act and

\$2,000,000 annual aggregate. The Licensee shall also maintain this coverage for five (5) years following the Expiration Date.

6. Umbrella or Excess Liability Insurance. The Licensee shall carry an umbrella or excess liability policy (which is excess over employer's liability, general liability, and automobile liability), in the amount of \$2,000,000 per occurrence.
 7. Environmental Liability Insurance. The Licensee shall carry a policy to cover costs associated with bodily injury, property damage and remediation expenses associated with pollution incidents including, but not limited to, mold, asbestos or lead removal. The policy shall provide a minimum of \$1,000,000 in coverage per incident and \$2,000,000 in the aggregate.
- ii. *Duration.* The Licensee shall carry all required insurance throughout the License Term, and shall carry the required general liability insurance and any required professional liability insurance for five (5) years following the Expiration Date of this License.
 - iii. *Liability.* This Section 10(b) contains the required minimum insurance coverage established by the Licensors. HOWEVER, SUCH MINIMUM INSURANCE REQUIREMENTS WILL NOT IN ANY WAY LIMIT THE LICENSEE'S LIABILITY UNDER THIS LICENSE.
 - iv. *Licensee's Property.* Licensee is solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, construction trailers, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia, as its interests may appear.
 - v. *Payment.* The Licensors shall not make any payment for any insurance hereunder. The Licensee shall bear the cost for all insurance.
 - vi. *Notification.* Notwithstanding anything to the contrary, Licensee shall promptly provide the Licensors with written notice in the event that its insurance coverage has or will be substantially changed, cancelled or not renewed, and provide updated certificates of insurance and declarations pages to the Licensors.
 - vii. *Disclosure.* Licensee agrees that Licensors may disclose the name and contact information of its insurers to any third party which presents a claim against Licensors for any damages or claims pertaining to the Premises, resulting from or arising out of Licensees use of the Premises, or this License.

12. Limitations of Licensors' Liability. Except to the extent arising out of the negligent or intentional wrongful acts, as determined by a court of competent jurisdiction, of the Licensor or its employees, agents or contractors, Licensor shall not be liable to Licensee or Licensee's Agents for any damage, compensation or claim arising from (i) repairing any portion of the Premises, (ii) any interruption in the use of the Premises, (iii) any accident or damage resulting from the use of the Premises by Licensor, Licensee, Licensee's Agents or any other person or persons whatsoever, (iv) the termination of this License by reason of the destruction of the Premises such that it is no longer usable for its original purpose or Licensor's exercise of its right to terminate provided under Section 2 hereof, (v) any fire, robbery, theft, criminal act and/or any other casualty, (vi) any leakage or flooding in any part of the Premises, or from water, rain or snow that may enter in or flow from any part of the Premises, or flow in or from drains, pipes or plumbing work at the Premises, or (vii) any other cause whatsoever. Any goods, property or personal effects, stored or placed by Licensee in or about the Premises, shall be at the sole risk of the Licensee.

13. General Covenants. Licensee at its sole cost and expenses shall:

- a. conduct its business in all respects in a commercially reasonable manner by employing reputable business standards and practices;
- b. comply with all statutes, laws, rules, orders, regulations and ordinances affecting the Premises and Licensee's use thereof;
- c. provide appropriate security for the Premises;
- d. report in writing any and all incidents involving injury to persons or damage to property immediately to Licensor; and
- e. be responsible for all damages and/or claims that may arise from the use of the Premises except if caused by the negligent or intentional wrongful acts of Licensor or its employees, agents or contractors or third parties outside the control of Licensee as determined by a court of competent jurisdiction.

14. Use of the Premises. In regard to its use and occupancy of the Premises, Licensee shall not:

- a. allow food or beverages to be sold at the Premises;
- b. use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, and reception of radio and television broadcasts within the Premises which is in any manner audible or visible outside of the Premises, as determined by the Licensor in its sole but reasonable discretion;
- c. permit accumulations of garbage, trash, rubbish, or other refuse within or without the Premises, except as to be collected or disposed of in accordance with applicable trash removal requirements;

- d. cause or permit objectionable odors to emanate or be dispelled from the Premises;
- e. allow solicitations in or on the Premises;
- f. allow the use of, or bring into the Premises any weapons, alcoholic beverages, and/or illegal substances; and
- g. conduct or permit any activities on the Premises that might constitute a public or private nuisance.

15. **No Assignment.** This License is personal to Licensee and Licensee may not sell, assign or in any way transfer it without the written consent of the Licensors. Any unauthorized assignment of this License or any interest therein by Licensee in contravention of this provision shall be null and void, and shall cause this License to terminate.

16. **No Alterations.**

- a. Licensee shall not make, or permit anyone to make on their behalf, any permanent changes, alterations, additions or improvements, structural or otherwise, in or to the Premises (collectively, “**Alterations**”), except as otherwise set forth herein, without the prior written consent of Licensors.
- b. If any Alteration is made without the prior written consent of Licensors, as provided above, Licensors may correct or remove the same at the sole cost and expense of Licensee. Licensee shall be liable for any and all loss, damage, actual cost or expense (including, without limitation, reasonable attorneys’ fees and all court costs) incurred by Licensors during or related to such removal or correction.

17. **Default.** If Licensee breaches any of the material terms or conditions of this License and the same continues for thirty (30) days after written notice is delivered by Licensors to Licensee, then Licensors may immediately terminate this License and/or pursue any other remedies available to it under this License, at law or in equity. Notwithstanding anything to the contrary herein, in no event shall either party be liable for punitive or consequential damages hereunder.

18. **Exclusive Agreement.** All understandings and agreements heretofore made between the Licensors and Licensee regarding the Premises are set forth in this License, which expresses the Licensors’ and Licensee’s entire agreement, and no representations, oral or written, not expressly contained herein, shall be considered to be a part hereof. This License may not be altered, enlarged, modified, changed or extended except by a written instrument signed by Licensors and Licensee.

19. **Invalidity of Provisions; Severability.** If any term, covenant, or condition of this License, or the application thereof to any person or circumstances, shall be held invalid or unenforceable, the remainder of this License, or the application of such term or provision to

persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each other term shall be valid and enforceable to the fullest extent permitted by law as if such invalid or unenforceable term or provision had not been included herein.

20. Authority.

- a. Authority of the Licenser. By executing this License the Licenser represents to Licensee that: (i) it is authorized to enter into, execute, and deliver this License and perform its obligations hereunder; (ii) this License is effective and enforceable against the Licenser in accordance with its terms; (iii) the person signing on the Licenser's behalf is duly authorized to execute this License; and (iv) no other signatures or approvals are necessary in order to make all of the representations of the Licenser contained in this paragraph true and correct.
- b. Licensee's Representations. By executing this License, the Licensee represents to the Licenser that: (i) it is authorized to enter into, execute and deliver this License and perform its obligations hereunder; (ii) this License is effective and enforceable against the Licensee in accordance with its terms; (iii) the persons signing on behalf the Licensee is duly authorized to execute this License; and (iv) no other signatures or approvals are necessary in order to make all of the representations of the Licensee contained in this paragraph true and correct. Licensee further represents that (a) it is in good standing in its place of organization and will remain so for so long as it is a Licensee hereunder, (b) if it is a foreign corporation or entity, it has become, and will remain so for so long as it is a Licensee hereunder, qualified to do business in the District of Columbia, and (c) it is and shall remain in compliance with any and all District of Columbia laws and regulations applicable to Licensee.
- c. Licensee's Representative. The Licensee hereby designates and appoints _____ (the "**Licensee's Representative**"), as the sole person with authority to communicate with the Licenser regarding any issues that may arise under this License. Licensee may change the Licensee's Representative upon prior written notice to the Licenser.

21. Context of Words. Where the context requires, words in the singular shall be substituted for the plural and vice versa, and words in the masculine shall be substituted for any gender.

22. Notice. Whenever any demand, request, approval, consent or notice (singularly and collectively, "**Notice**") shall or may be given by one Party to the other, such Notice shall be in writing and addressed to the Parties at their respective addresses as set forth below and served by (i) hand, (ii) a nationally recognized overnight express carrier, or (iii) certified mail, return receipt requested. The date the Notice is received shall be the date of service of Notice. If an addressee refuses to accept delivery, then Notice shall be deemed to have been served on either (i) the date hand delivery is refused, (ii) the next business day after the Notice was sent in the

case of attempted delivery by overnight carrier, or (iii) five (5) business days after mailing the Notice in the case of certified mail. Either party may, at any time, change its Notice address by giving the other party Notice, in accordance with the above, stating the change and setting forth the new address. Any Notice required pursuant to this License shall be addressed as follows (or to such other address as shall be subsequently indicated in writing to either party to this License from the other):

IF TO THE LICENSOR:

The Government of the District of Columbia
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, D.C. 20009
Attention: Director

with a copy to: The Government of the District of Columbia
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, D.C. 20009
Attention: General Counsel

And, in the event of a Licensor Default, with a copy to:

Office of the Attorney General for the District of Columbia
441 4th Street, N.W., Suite 1010 South
Washington, D.C. 20001
Attention: Deputy Attorney General, Commercial Division

IF TO THE LICENSEE:

320 FLORIDA OWNER, LLC

23. Counterparts. This License may be executed in several counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this License by facsimile or PDF shall be sufficient for all purposes and shall be binding on any party who so executes.

24. Absence of Interest. Licensee represents that no officer, agent, employee, elected official or other representative of Licensor, or of the Council of the District of Columbia, has received any payment or other consideration for the making of this License and that no such person has any interest, direct or indirect, in this License or the proceeds thereof or related thereto.

25. **Governing Law; Service of Process.** This License shall be governed by the laws of the District of Columbia and the Licensee hereto accepts the jurisdiction of the Superior Court of the District of Columbia as the court of competent jurisdiction to resolve matters under this License.

26. **WAIVER OF JURY TRIAL.** *THE PARTIES HERETO EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL AND AGREE THAT ANY DISPUTES HEREUNDER THAT RESULT IN THE FILING OF AN ACTION IN ANY DISTRICT OF COLUMBIA COURT SHALL BE RESOLVED BY A BENCH TRIAL.*

27. **Days; Including.** All days referred to herein shall be calendar days unless otherwise specified. Use of the word “including” shall also mean “including without limitation.”

28. **No Broker.** Licensors and Licensee hereto represent to each other that neither of them has employed any broker in carrying on the negotiations relating to this License.

29. **No Partnership.** Nothing contained in this License shall be deemed or construed to create a partnership or joint venture of or between Licensee and Licensors, or to create any other relationship between the parties hereto other than that of Licensee and Licensors.

30. **Anti-Deficiency.** The following limitations exist as to each and every purported obligation of Licensors set forth in this License, whether or not expressly conditioned:

- a. The obligations of Licensors to fulfill any financial obligation pursuant to this License, or any subsequent agreement entered into pursuant to this License or referenced herein (to which Licensors is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004) (the “Federal ADA”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2006 Supp.) (the “D.C. ADA” and (i) and (ii) collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2006 Supp.), as may be amended from time to time, to the extent applicable to this License. Pursuant to the Anti-Deficiency Acts, nothing in this License shall create an obligation of the Licensors in anticipation of an appropriation by the United States Congress (“Congress”) for such purpose, and the Licensors’s legal liability for any such obligation shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year.
- b. This License shall not constitute an indebtedness of Licensors nor shall it constitute an obligation for which Licensors is obligated to levy or pledge any form of taxation as it relates to this License or for which Licensors has levied or pledged any form of taxation. No District of Columbia official or employee is authorized to obligate or expend any amount under this License unless such amount has been appropriated by Act of Congress and is lawfully available.

31. Nondiscrimination.

- a. Licensee shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other applicable laws, or court order, in the sale, lease, rental, use or occupancy of the Premises.
- b. Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable law or court order.
- c. Licensee will take affirmative action to ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Licensee agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the District of Columbia or any agency thereof setting forth the provisions of this non-discrimination clause.
- d. Licensee will, in all solicitations or advertisements for potential employees placed by or on behalf of Licensee, include the federal U.S. Equal Employment Opportunity Commission's logotype, statement, or slogan as a means of educating the public that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable law or court order.

32. Signs. Licensee shall not affix, exhibit, attach, or allow any signs, signboards, writing or printed matter on the Premises, or that is visible from the Premises, or any portion of the surrounding area, without the prior written consent of the Licensor. The sole cost for all signs shall be borne by the Licensee.

33. Hazardous Materials.

- a. Except for (i) ordinary and general office supplies typically used in the ordinary course of business, including but not limited to copier toner, liquid paper, glue, ink, and common household or office cleaning materials, and (ii) products which are necessary and customary in the conduct of Licensee's business in accordance with Licensee's Permitted Use, all of which shall be

stored, used and disposed of in accordance with all applicable Hazardous Material Laws (hereafter defined) or other applicable laws, Licensee agrees not to cause or permit any Hazardous Materials (hereafter defined) to be brought upon, stored, used, handled, generated, released or disposed of, on, in, under or at the Premises, by Licensee or Licensee's Agents. Licensee shall not discharge Hazardous Materials into or through any sanitary sewer serving the Premises in violation of applicable laws.

- b.** Licensee shall promptly notify Licensors in writing (and provide Licensors with copies) when (and if) Licensee first receives written notice of any proceedings, actions, claims, notices, demands, reports or asserted violations arising out of or in connection with the presence of Hazardous Materials, or any actual or alleged violations of any Hazardous Material Laws, at, on, under or in the Premises.
- c.** In the event Hazardous Materials are discovered in, under or on the Premises from and after the Effective Date due to any act or omission of Licensee or Licensee's Agents which is (a) negligent, (b) unlawful, or (c) in violation of Licensee's obligations pursuant to this License, Licensee shall promptly, at its sole risk and expense, commence to perform, and diligently prosecute to completion, all work necessary or required to remove, treat, dispose of and clean up the Hazardous Materials and return the Premises to the condition existing prior to the contamination by the Hazardous Materials. All such remediation shall be approved by Licensors and shall be performed to its reasonable satisfaction to the extent required by and in accordance with all applicable Hazardous Materials Laws.
- d.** Licensee shall save, defend, indemnify and hold harmless Licensors and Licensors's Indemnitees from and against any and all liabilities, actions, demands, penalties, losses, costs and expenses which may be paid, incurred or suffered by or asserted against Licensors or any of Licensors's Indemnitees as a result of the presence on or under the Premises of Hazardous Materials, or the Release (hereafter defined) of any Hazardous Materials at the Premises, which such presence or Release is in violation of Licensee's obligations pursuant to this License. Notwithstanding the foregoing, or anything to the contrary contained elsewhere in this License, the foregoing indemnification shall not include the presence or Release of any Hazardous Materials in, on or under the Premises prior to the Effective Date. Notwithstanding anything to the contrary herein, Licensee shall have no liability or obligations hereunder with respect to any Hazardous Materials existing in, on or under the Premises on or prior to the Effective Date including without limitation, for the worsening after the Effective Date of any Hazardous Materials that existed in on or under the Premises prior the Effective Date or any conditions associated therewith, unless the worsening of any such condition is caused by Licensee or Licensee's Agents.

- e. The term “Hazardous Materials” shall mean each and every element, compound, material, mixture, substance or waste which is classified as a hazardous substance, hazardous waste, hazardous material, toxic substance, pollutant or contaminant under any of the Hazardous Material Laws, or the presence of which may cause liability under any of the Hazardous Material Laws.
- f. The term “Hazardous Material Laws” shall mean any present or future laws relating to the protection of the environment or human health.
- g. The term “Release” shall mean the releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Materials, regardless of whether such event is the result of an intentional or unintentional act or omission.

34. Force Majeure. The Licensor and the Licensee shall be excused from performing an obligation or undertaking provided for in this License so long as the performance is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure, or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, laws, orders of government or of civil, military, or naval authorities (but only such orders of a general nature pertaining to the Premises and comparable properties in the District of Columbia), or any other cause, whether similar or dissimilar to the foregoing not within the reasonable control of the Licensor or the Licensee, as the case may be.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, Licensor and Licensee have entered into this License as of the Effective Date as their free act and deed for the uses and purposes herein contained.

LICENSOR:

DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Department of General Services

By: _____

Approved as to Legal Sufficiency for District of Columbia by:
The Office of the General Counsel for the Department of General Services:

By: _____
Assistant General Counsel

LAST SIGNATURE PAGE FOLLOWS

LICENSEE:

320 FLORIDA OWNER, LLC

By: _____

Its: _____

EXHIBIT A
Premises

Exhibit B